

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6964

Joint Petition of Network US, Inc.,)
and Norstar Communications, Inc.,)
for Approval of a Sale of Assets)

Order entered: 9/8/2004

I. INTRODUCTION

On June 12, 2004, Network US, Inc. ("Network ") and Norstar Communications, Inc., ("Norstar") (collectively "Petitioners") jointly filed a Telecommunications Merger and/or Acquisition Request for Approval Form ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. § 109, for approval of Network's acquisition of the assets of Norstar. The Petitioners also request that the Certificate of Public Good (CPG No. 637) to provide telecommunications services in Vermont held by Norstar be revoked pursuant to 30 V.S.A. § 231.

On August 31, 2004, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the sale of assets and revoke Norstar's CPG, because the proposed transactions would not detrimentally impact Vermont consumers or cause them inconvenience or confusion.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. Network is authorized to provide telecommunications services in Vermont pursuant to CPG No. 644, issued on July 11, 2001. Petition at 1.
2. Norstar is authorized to provide telecommunications services in Vermont pursuant to CPG No. 637, issued on January 24, 2001. Petition at 1-3.

3. Pursuant to an Asset Purchase Agreement between Network and Norstar, Network will acquire substantially all of the assets of Norstar. Petition at 1.

4. As a result of the sale of assets, Norstar will no longer operate as a telecommunications provider in Vermont and consequently Petitioners request revocation of Norstar's CPG. Petition at attachment.

5. The customers of Norstar will continue to receive service under the same terms and conditions from Network. Accordingly, the acquisition should cause no inconvenience to Vermont consumers. Petition at 3 and attachment.

6. The proposed transaction should result in greater operating efficiency, thus enhancing the ability of Network to offer competitively priced services in the Vermont interexchange telecommunications marketplace and, thus, promoting the public interest. Petition at 3.

III. DISCUSSION

The transfer or sale of assets requires approval by the Board under 30 V.S.A § 109. The statutes condition approval of a sale of assets or merger upon a finding that the sale of assets will promote the public good (30 V.S.A. § 109). That standard is met in this case.

Pursuant to 30 V.S.A. § 109, "a foreign corporation subject to the jurisdiction of the [Board], shall not make a sale . . . in any one calender year constituting ten percent or more of the company's located within this state . . . nor merge nor consolidate . . . " without approval of the Board.

After reviewing the Petition, 30 V.S.A §109 applies to the sale of assets of Norstar, which is a certificated telecommunications carrier in Vermont, to Network. We further conclude that the transfer of assets will not detrimentally affect customers of Norstar because these customers will be served by Network at the same the terms and conditions of Norstar's tariffs. In addition, the sale of assets should result in greater operating efficiency for Network, thus enhancing the ability of Network to offer competitively priced services in the Vermont telecommunications marketplace. The sale of assets, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 109 and should be approved.

Petitioners have also requested that the Board revoke the CPG held by Norstar, in that

Norstar will, as a result of the transfer of assets, no longer operate in Vermont. No opposition to this request has been raised. The Board finds the reasons articulated by the Petitioners in support of the request to be convincing. This finding, together with the fact that no opposition to the filing has been registered with the Board, leads us to conclude that Norstar's CPG should be revoked. While 30 V.S.A. §§ 102(c) and 231(a) require that a hearing be held before revocation of a CPG is allowed, we note that Rule 56 of the V.R.C.P. provides that where no genuine issue of material fact exists, a hearing is not necessary. We find that the requirements of V.R.C.P. Rule 56 are met in this case and, therefore, grant the Petitioners' request without a hearing.

IV. CONCLUSIONS

The sale of assets of Norstar to Network and the subsequent revocation of Norstar's CPG to provide telecommunications services, should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 109.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The sale of assets of Norstar Communications, Inc., to Network US, Inc., will promote the public good and, therefore, is approved.
2. Effective upon the completion of the sale of assets of Norstar Communications, Inc., to Network US, Inc., the Certificate of Public Good (CPG No. 637) issued to Norstar Communications, Inc., on June 6, 2001, is revoked.
3. Petitioners shall file a letter notifying the Board of the completion of the transaction within one week of such completion.
4. Network US, Inc., shall file revisions to its tariff to include the existing service offerings of Norstar Communications, Inc., within one week of the completion of the transaction.
5. A Certificate of consent to the sale of assets of Norstar Communications, Inc., to Network US, Inc., shall be issued.

DATED at Montpelier, Vermont, this 8th day of September, 2004.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: September 8, 2004

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.